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March 24, 2009

Ms. Wendy S. Wyels,
Chief, Compliance and Enforcement Section
Ms. Sue McConnell, Senior WRCE
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Draft Cleanup and Abatement Order for El Dorado County Department of
Transportation, Rubicon Trail, El Dorado County

Dear Ms. Wyels and McConnell:

The Center for Sierra Nevada Conservation (CSNC) has reviewed the *Draft Cleanup and Abatement Order, El Dorado County Department of Transportation Rubicon Trail, El Dorado County* and submits the following comments. CSNC requests status as a designated party for this proceeding. CSNC is a 501(c)(3) public benefit conservation and research organization established in 1986 for the purpose of conserving, restoring, and enhancing Sierra Nevada ecosystems.

CSNC actively and regularly advocates for responsible management of off-road vehicle activity on public lands throughout California before state and federal agencies, and the State Legislature and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's degraded water quality and fisheries. CSNC members reside, boat, fish and recreate in and along waterways throughout the Central Valley, particularly in El Dorado County, the county in which CSNC is based and in which the majority of our members reside. The Rubicon River and Gerle and Ellis Creeks are in CSNC's "backyard" and regularly used by our members for fishing and hiking. Loon Lake is popular with CSNC members for boating, fishing and swimming. The deteriorating condition of the Rubicon Trail has long been a concern for our community.

We appreciate, applaud and support the Regional Board's effort to abate the mismanagement and water quality impacts of heavy recreational use of this area. It is long overdue. While we appreciate the abatement requirements of the proposed Order, the cleanup aspect is absent. El Dorado County should be held responsible for cleanup of existing hazards to water quality, especially the petroleum product residues that pervade much of the area. We also believe monitoring for compliance and effectiveness is imperative to determining compliance with and effectiveness of the CAO.

1. The 6-year long Rubicon Trail Planning Process was aborted without a plan to address the environmental impacts.

In 1988, the Eldorado National Forest (ENF) included, as part of its forest planning process, its intent to complete a management plan for the Rubicon Trail. (Appendix A)

In 1989, as the Draft CAO notes, El Dorado County (EDC) adopted a Resolution declaring that the Rubicon Trail is a non-maintained public road. The purpose of the declaration was an effort to avoid any permit requirements or restrictions on use that the aforementioned ENF planning effort might require.

The Rubicon Oversight Committee (ROC) was established in 2002 by former District 4 Supervisor Penny Humphreys to develop a management plan for the Rubicon Trail. Her goal, and ours, was to keep the Rubicon Trail a sustainable recreational opportunity while protecting environmental resources. The ROC has met monthly since then, with a variety of stakeholders represented. In 2002, CSNC believed the county and the motorized vehicle users were sincere in wanting to solve the problems on the trail. We agreed to exclude the Rubicon from the Forest Service route designation process that began in 2003, believing the focused effort would be more beneficial. (See LA Times article, Appendix B)

It became clear however, that addressing resource concerns and user conflicts was not truly on the agenda some on the ROC and in county government. At times, threats and harassment by some users on the ROC towards the environmental representatives, including CSNC's representative, resulted in discouraging a broad public representation at the ROC meetings.¹

The ROC meeting agendas have included, since 2003, the Rubicon Trail Management Plan, surveying and recording the county easement, sanitation, carrying capacity and bridges over Ellis and Gerle Creeks. Despite spending hundreds of thousands of dollars of state grant money talk, little has been accomplished in the past six years to address any of these issues. There is still

¹ These incidents occurred outside of the ROC meetings themselves, which the county has always conducted in a professional, courteous manner.

no recorded easement or right of way, no valid user count (although in applying for grant money, EDC asserts 38,000 users per year). Use of “wag bags” is still voluntary and compliance still poor. The beautiful area around Spider Lake, years after it was closed by the County Health Department because of the health hazards posed by human waste, is still awash with toilet paper “roses” for much of the summer. After investing nearly \$400,000 in State OHV Grant funds on the Trail Management Plan, in 2008 Supervisor Sweeney decided the county couldn’t afford the plan. However, had it been adopted, the Trail Management Plan included funding sources, including user fees.²

The County received a State OHV grant in 2007 to fund engineering and environmental review of the Gerle and Ellis Creek bridges. The bridges were supposed to be completed by summer of 2008, but it was not until after the county received the Draft CAO that preliminary drawings for the bridges were prepared. We are now told the bridges will be installed in 2010 or 2011. Had the county not received the Draft CAO, we would still be waiting for the engineering and environmental review to begin.

As Water Board staff saw in the summer of 2008, trail runoff is impacting the beneficial values of Ellis and Gerle Creeks and Loon Lake. Petroleum products spills are evident on the trail; parts of the trail reek of hydraulic fluid and motor oil. CSNC representatives have been on the entire trail and regularly walk the portion from Loon Lake to Spider Lake. During the time the ROC has been meeting and discussing environmental issues on the trail, we have seen a notable widening and deepening of many portions of the trail. User groups have reported doing trail repairs, but we have seen no documentation of those repairs, nor do current conditions bear testament to their effectiveness.

Many of the users who are eager to do trail maintenance are the same ones who refuse to give up winter use of the trail. We don’t doubt the sincerity or willingness of the users help maintain the trail; the problem is that the trail is in such poor condition, repairs are far beyond what can be accomplished by volunteers without the support of heavy equipment and use of many tons of fill materials. The latter requires commitment by El Dorado County to supervise and do the “heavy lifting,” so to speak. It also requires an end to use when the road surface is wet, and law enforcement to curtail the damage caused by irresponsible users.

2. El Dorado County is Responsible and Liable for Trail Conditions

At a stakeholder meeting facilitated by Water Board staff on March 12, 2009, to discuss the Draft CAO Supervisor Jack Sweeney asserted that while the Rubicon

² Rubicon Trail Management Plan Fiscal Impact Analysis and Report, ESP, Inc., December 2007.

Trail was a public right of way, El Dorado County didn't maintain it and was not liable for any conditions on the trail that result in water quality violations. This statement helps to explain the county's failure to complete a recording of a right of way for the trail, despite several years of telling stakeholders on the Rubicon Oversight Committee that it was doing so, and collecting State OHV grants for that purpose. A lack of a recorded right of way has impeded law enforcement efforts and stalled restoration work on and adjacent to the trail.

Despite Supervisor Sweeney's denial of ownership and liability, EDC has obtained hundreds of thousands of dollars in grant monies over the past several years, for a variety of activities on the Rubicon Trail. It is our belief that In accepting and spending these grant monies, EDC has accepted ownership of the Rubicon Trail, as well as liability for the degradation of water quality that results from its use. It is now responsible for the abatement and cleanup of the resource damage.

3. Eldorado County admits to sedimentation of Gerle and Ellis Creeks from the Rubicon Trail

El Dorado County's grant requests to the State OHV Division not only document ownership of the trail, but also admit existing use threatens water quality. Grant OR-817, signed by representatives from the OHV Division and El Dorado County in November 2007, includes the following narrative:

One of the most significant environmental issues identified with regard to vehicle use of the Rubicon Trail is water quality. There is a need to provide structural crossings of Ellis Creek and Gerle Creek, in order to reduce the amount of sediment and petroleum products that enter these creeks from vehicles crossing the streams as well as from trail approaches, and to minimize turbidity in the water from tires churning up unarmored stream beds.

An existing bridge across Gerle Creek was washed out in 1986. Since then, vehicles have crossed by fording the river. This class-one stream provides habitat for populations of Rainbow trout, Brown trout, Brook trout and California roach. The existing crossing is directly through the unarmored stream, resulting in unacceptable sedimentation from vehicle traffic on the approaches and turbidity from vehicles crossing the stream.

Once the Rubicon Master Plan is adopted in the fall of 2006, monitoring over the next several years will help to determine a "carrying capacity" for the trail. Facilities such as environmentally-sound water crossings will allow a higher number of users on the trail than would be suitable without such improvements. Existing levels of sedimentation and turbidity are

likely affecting aquatic resources.

These bridges will reduce future costs, as well as help avoid possible trail closure, by providing safe, environmentally- and structurally-sound crossings. Without the bridges, the approaches will require constant monitoring and maintenance to minimize the amount of sediment that reaches the creek.

At this point in time, it is unknown whether any amount of maintenance of the existing crossings could satisfactorily reduce sedimentation. As vehicle numbers increase, such monitoring and maintenance alone would require a full-time person. The immediate one-time cost of designing an environmentally acceptable crossing will be offset in just a few years by the reduction in maintenance that would otherwise be required.³

4. The CAO must include a requirement for the county to determine Carrying Capacity.

After years of discussions, El Dorado County still lacks the most basic planning data, including user counts. El Dorado County asserted in its 2006 OHV Grant application that 38,000 people use the trail annually. Users claim that the County estimates are exaggerated; that actual numbers are more in the range of 5,000 visitors annually. If the users are correct, then carrying capacity is probably far less than 5,000 visitors per year. A winter closure would probably allow higher annual visit numbers, as use on wet soils results in significantly more damage than use on dry soils.

5. The CAO Must Require a Monitoring Plan and Law Enforcement Plan.

The ongoing degradation of the Rubicon Trail, despite El Dorado County receiving hundreds of thousands of dollars for enforcement, maintenance, equipment and planning, demonstrates the need for formal monitoring of the Rubicon Trail. The CAO must include a requirement for a monitoring plan to ensure that measures for the protection of water quality are effectively implemented and maintained. It must also require a law enforcement plan to ensure the county's abatement efforts are not thwarted by illegal use.

6. The CAO must include firm timeframes for accomplishing Cleanup and Abatement. El Dorado County has used the Trail Management Plan and ROC as stalling mechanisms to prevent the Forest Service or environmental

³ El Dorado County OHV Grant Project Agreement, November 2007.

organizations from taking action to actually prevent or repair resource damage. The CAO must not allow further delaying tactics.

7. The CAO must include seasonal closure consistent with the rest of the Eldorado National Forest roads.

CSNC does not want to see the Rubicon Trail permanently closed. We do want to see it properly managed, so that water quality, riparian resources and aquatic wildlife are protected. One management tool immediately available at no cost to El Dorado County is a wet weather closure of the trail, such as that adopted by Eldorado National Forest and proposed by other Sierra Nevada Forests to protect their native surfaced roads and trails from damage by winter use. The Eldorado National Forest Travel Management Environmental Impact Statement found, *“Drainage structures are particularly susceptible to damage during the wet season by motorized vehicles.”*⁴

The Rubicon Trail is the only native surfaced road on the Eldorado National Forest that is not closed during the winter months. Thus, the threat that a seasonal closure would only move the problem to another location is a red herring; the only users that would pose a risk to other areas are those who violate the closures. That is an issue for law enforcement to deal with, not the Water Board.

Thank you for this opportunity to comment, and thank you for taking this action for the protection of the state's waters and beneficial uses.

Sincerely,

Karen Schambach
President

Attachments:

Appendix A: Eldorado National Forest Land Management Plan, p. A-1
Appendix B: LA Times Article on Rubicon, 2002
Appendix C: CD with El Dorado County OHV Grants 2002-2008

⁴ Eldorado National Forest Travel Management FEIS, p. 3-25

